



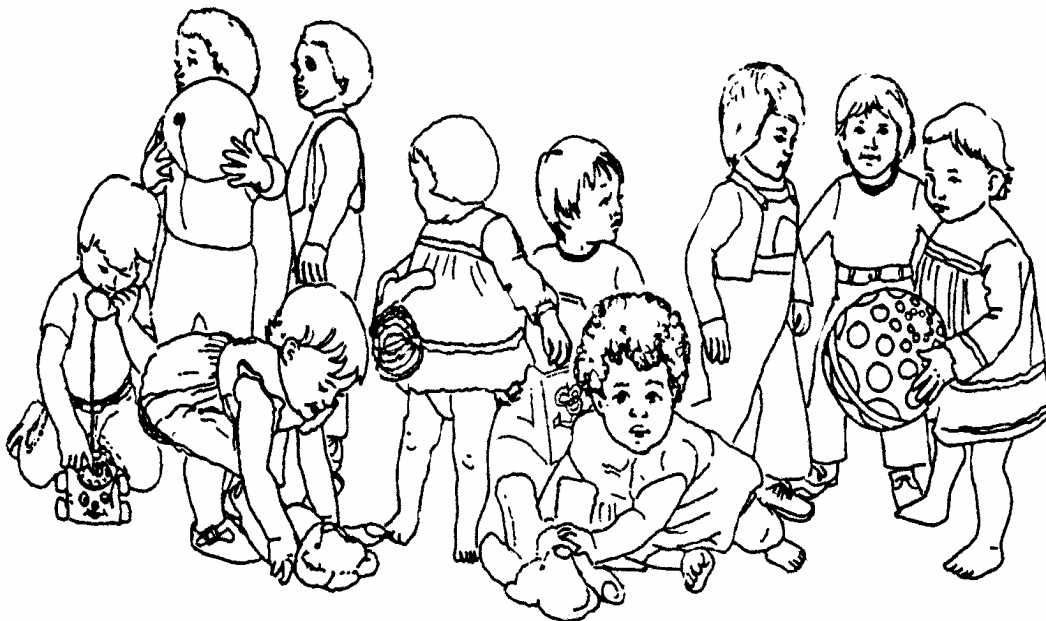
California Department of
Social Services



Child Care Advocate Program

Family Child Care Self-Assessment Guide

WAIVERS, EXCEPTIONS AND EXEMPTIONS



COMMUNITY CARE LICENSING DIVISION
"Promoting Healthy, Safe and
Supportive Community Care"

FAMILY CHILD CARE GUIDELINES TO WAIVERS, EXCEPTIONS AND EXEMPTIONS

INTRODUCTION

Family child care providers are required to maintain compliance with regulations at all times. In some cases, applicants/licensees may wish to use alternative methods which, while not in strict compliance with the regulations, meet the intent of the regulations and allow for more effective operation of the facility. In these cases Community Care Licensing may issue waivers, exceptions or exemptions to regulations so long as there is no reduction in the protection of the health and safety of children. **Please note:** Community Care Licensing cannot grant waivers or exceptions to law.

Waivers and exceptions can be used in areas involving services, procedures, equipment, space, staff qualifications or staff ratios. Experimental and demonstration projects can also be allowed using the waiver and/or exception process. The main requirement before licensing will consider granting a waiver and/or exception request is that the intent of the regulation guaranteeing safe, healthful, and adequate services must be met.

This guide provides definitions of waivers, exceptions and exemptions, and basic information on how to request one.

WHAT IS A WAIVER?

“Waivers” are requests to waive a particular regulation on a facility-wide basis. Waivers are not tied to a specific individual and may remain in effect regardless of changes in clients and staff and cannot be transferred from one facility to another.

EXAMPLE: Regulations require that a fence that meets the uniform building code requirements surround a swimming pool. The pool does not have a fence on one side because on that side the home is used as the pool barrier. A waiver from the fence requirement to allow alarms to be used on four windows that are on one side of the home that is used as the pool barrier would be required.

WHAT IS AN EXCEPTION?

“Exceptions” are requests to make an exception to the regulations for a specific child or staff person based upon the unique needs or circumstances of that individual.

Typically, exceptions for children concern ages or medical issues. Exceptions for staff usually concern staff qualifications. Exceptions cannot be transferred to other children, staff, child care facilities or licensees.

EXAMPLE: Regulations require that the applicant for a large family child care home have at least one year of experience as an administrator, director or teacher in a child care center. If an applicant has one year of experience as a teachers aid at an elementary school, an exception would be needed.

WHAT IS AN EXEMPTION?

“Exemptions” are requests to allow an employee or adult with a criminal conviction to work or live in a child care facility. An exemption is granted for a particular employee or adult and specific conviction(s). Some convictions are prohibited from exemption by law.

EXAMPLE: Regulations/laws prohibit any adult or employees of facilities from having criminal records unless Community Care Licensing grants the person a criminal record exemption. If a licensee has an adult living in the home or wants to hire an employee who has been convicted of a crime (shoplifting, burglary, assault, etc.) an exemption is required.

HOW TO APPLY FOR A WAIVER/EXCEPTION?

Waivers and exceptions must be approved by licensing before the facility implements the practice described in the request. A facility that operates in violation of any regulation without an approved waiver or exception is subject to citation and possible civil penalties.

Waiver and exception requests must be made in writing to the District Office responsible for licensing the facility. They must include substantiating evidence supporting the request. This usually involves explaining the background, how the intent of the regulation(s) will still be met, and letters/correspondence to support the benefit in granting the request. They must also be signed by the applicant/licensee or their designated representative.

WHAT THE LICENSING PROGRAM ANALYST CONSIDERS WHEN REVIEWING A REQUEST FOR A WAIVER OR EXCEPTION?

The information needed by the Licensing Program Analyst to evaluate the request will vary depending on the nature of the waiver or exception. It is best to contact the Licensing Program Analyst prior to submitting the request to determine exactly what information will need to be submitted.

When reviewing a request the Licensing Program Analyst will consider the following:

1. That the requested alternative still meets health and safety standards.
2. That the request does not mean other regulations will not be met.
3. Whether additional requirements need to be required to ensure the intent of the regulation is still met.
4. That the request does not negatively impact the health and safety protection to any child in care.

WHAT THE APPLICANT or LICENSEE SHOULD CONSIDER WHEN PREPARING THE REQUEST

WAIVER REQUESTS – These should identify an alternate method or plan explaining how the intent of the specific regulation will still be met. There should be an explanation why this request is needed and how the alternate plan will be implemented. The plan must provide at least the same level of protection to children in care as the regulation the applicant or licensee wants a waiver.

EXCEPTION REQUESTS – These should provide the name, age, and special circumstances of the child/staff for whom the “Exception” is being requested. Supporting documentation should be dated and signed by the person providing the input whether it be a licensee, parent, physician, judge, professor, etc. The plan must provide at least the same level of protection to children in care as the regulation the applicant or licensee wants an exception.

The type of documentation may vary, but some general rules do apply. If the request is for a physical plant requirement, a sketch of the facility floor plan and plot plan should be submitted. If the request concerns staffing issues, a schedule of assignments should be included. The documentation should include necessary information to ensure a balanced consideration of the request.

MAKING REQUESTS FOR EXEMPTIONS

Requests for Criminal Record “Exemptions” are handled by the Caregiver Background Check Bureau. The Caregiver Background Bureau will notify the licensee when an exemption is required and advise them as to what information will be needed to evaluate the request. Statute now requires that a person must have a criminal record clearance before he/she is allowed to be present or work in a licensed child care facility. A person with a criminal conviction must have completed the exemption process and have an approved exemption before being allowed to work or be present.